

## REMARKS

### I. Introduction

The undersigned thanks Examiner Erez for his review and consideration of the present Application, including for the Examiner's time he spent discussing the present Application with applicants in a December 18, 2007 telephone interview. In a non-final Office action mailed September 19, 2007, the Examiner rejected Claims 1-7, 9, 12-14, 36-42, and 45-47 under 35 U.S.C. § 102(b) as purportedly anticipated by U.S. Patent No. 3,977,397 (the "Kalnberz Patent"), and rejected Claims 8, 43, 44, and 44 as purportedly unpatentable under 35 U.S.C. § 103(a) over the Kalnberz Patent. The Examiner rejected Claims 10 and 11 as purportedly unpatentable under § 103(a) over the Kalnberz Patent and further in view of U.S. Patent No. 5,275,598 (the "Cook Patent"). The Examiner withdrew the previously indicated allowability of Claims 8, 43, and 44.

The undersigned respectfully submits the following amendments and remarks. Upon entry of the present amendment, Claims 1, 36, and 45 are amended to require a fixation system that includes at least six substantially rigid, adjustable length struts connected to at least two fixation plates, where each of the struts is disposed substantially diagonally with respect to its adjacent struts.

In response to a November 15, 2004 Office action that rejected Claim 1 under 35 U.S.C § 102(e) as anticipated by U.S. Patent No. 5,728,095 to Taylor et. al ("'095 Patent"), Claim 1 was amended by a March 11, 2005 Amendment to include the limitation that the value for  $n(360/a)$  be "a number greater than three." It was later discovered that the '095 Patent was not a proper § 102(e) reference because it is not a patent "by another." Therefore,

to more appropriately define the claim scope, Claim 1 has been amended to remove the limitation that the value for  $n(360/\alpha)$  be “a number greater than three.” Similarly, to more appropriately define the claim scope of Claim 45, Claim 45 has been amended to remove the limitation that the number of attachment structures be “at least six.”

Claims 49-51 are added to include limitations that the chord length between adjacent attachment structures be between about .48 inches and about .52 inches. No new matter has been added by these amendments. Pursuant to 37 C.F.R. § 1.173(c), support in the disclosure of the patent, among other places, can be found in Figures 2, 4, and 11 of U.S. Patent No. 5,891,143, column 3, lines 40-41 and column 4, lines 55-58. After entry of the amendment, Claims 1-14 and Claims 36-51 are pending in the reissue application, and Claims 15-35 remain canceled. The undersigned respectfully submits that all of the pending claims are patentable over the art cited in the Office Action.

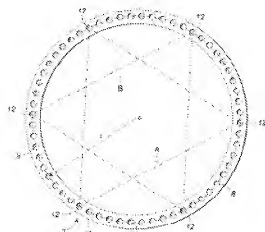
Because the claims have been amended, the undersigned submits with this response a new reissue declaration, the fully executed version of which will be submitted shortly hereafter.

## **II. Claim Rejections**

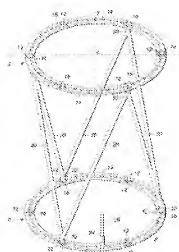
### **A. The Presently Claimed Invention**

The currently pending claims recite an orthopaedic spatial fixation system that may include, among other things, a plurality of fixation plates connected to each other by at least six substantially rigid, adjustable length struts, where each of the struts is disposed substantially diagonally with respect to its adjacent struts. Attachment structures of the fixation plates may facilitate the attachment of the struts to the plates, and may be positioned

in a symmetrical arrangement. Figure 1 of the Application (reproduced below) shows one non-limiting example of such symmetry. Figure 2 of the Application (also reproduced below) shows one non-limiting example of two fixation plates (2) that are connected by six struts (20), with each strut being substantially rigid, adjustable in length, and substantially diagonal to its adjacent struts.



**FIG. 1**



**FIG. 2**

The structure recited in all of the independent claims allows for a number of attachment structures positioned around a circular plate, where the number of attachment structures corresponds to a multiple of 3 and whereby the plate can be rotated in increments of 120° and each time, identical attachment structure positions with respect to a second plate are maintained. This “symmetry” is achieved by the structures of independent claims 1, 36, and 45. Moreover, the pending claims require that the fixator have at least six substantially rigid, adjustable length struts, with each strut being disposed substantially diagonally with

respect to each adjacent strut. A fixation system having such symmetry, combined with at least six substantially rigid struts that are disposed substantially diagonally with respect to each adjacent strut, is not taught, suggested, or shown in the references cited in the Office action. Moreover, a fixator having such symmetry is not taught, suggested, or disclosed in French Application No. 2576774, or any other reference of record. As described in the Applicants' specification, symmetrical rings may be beneficial to systems that employ diagonal, adjustable length struts because the attachment structure arrangement simplifies the method of using the device by simplifying the geometrical analysis of the systems often used with the claimed orthopaedic spatial fixation systems, and thus provide many clinical advantages.

B. The § 102 and § 103 Rejections

The Examiner rejected Claims 1-7, 9, 12-14, 36-42, and 45-47 under 35 U.S.C. 102(b) as anticipated by the Kalnberz Patent. The Examiner rejected Claims 8, 43, 44 and 48 under 35 U.S.C. 103(a) as unpatentable over the Kalnberz Patent, and rejected Claims 10 and 11 under 35 U.S.C. 103(a) as unpatentable over the Kalnberz Patent in view of the Cook Patent. In a December 18, 2007 interview, the undersigned and the Examiner agreed and recognized that the claims as currently amended are not anticipated or made obvious in light of the Kalnberz Patent or the Cook Patent because neither reference teaches, discloses, or suggests fixation plates that are connected to each other by at least six substantially rigid, adjustable length struts, where each of the struts is disposed substantially diagonally with respect to its adjacent struts, as required by all of the pending claims in their current forms. Rather, the Kalnberz Patent discloses a surgical compression-distraction instrument having

rings connected with helical springs that are not rigid and are not disposed diagonally with respect to one another. The Cook Patent discloses an Ilizarov ring assembly where the rings are connected by parallel rods that are not disposed diagonally with respect to one another. Accordingly, the undersigned respectfully requests allowance of the pending claims.

## CONCLUSION

The undersigned respectfully submits that all pending claims are in condition for allowance. Any fees due at this time may be charged to Deposit Account number 11-0855. If there are any matters that can be addressed by telephone, the Examiner is urged to contact the undersigned at 404.532.6947.

Respectfully submitted,

/Renae A. Bailey 58961/

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